# Who's rocking the cradle?

*Therese Macdermott*

## *Maternity rights in Australia.*


Integrating work and family is currently a strong theme of Australian social policy. So called 'cutting edge' corporations have a plethora of 'family friendly' policies and flexible work arrangements. To be 'family friendly' is now seen as making good business sense.[1] What has not been caught up in this rhetoric is the need for paid maternity leave as a fundamental prerequisite to achieving equality of employment opportunities for women in the paid workforce. Until very recently maternity rights in Australia principally have taken the form of an employment-based entitlement to leave from the paid workforce. In the private sector this leave has been largely unpaid. Because the focus of maternity rights has been on granting leave from the paid workforce, little attempt has been made to address the question of how to compensate women for their loss of income during a period of leave associated with the birth or adoption of a child. Only very recently have these leave arrangements been supplemented by a social security payment called the Maternity Allowance, the role of which as a form of income replacement is doubtful.

This article examines the development of maternity rights in Australia. It traces the evolution of maternity rights as an employment-based entitlement, and also seeks to position the new Maternity Allowance within the wider debate on maternity rights. A discussion of the Maternity Allowance does raise the issue of maternity rights of women who are not in the paid workforce. It is not the intention of this article to debate the manner in which the economic and social value of unpaid work in the home should be recognised and rewarded. The principal focus is on paid maternity leave as a means of facilitating women's participation in paid employment. The current state of maternity rights in Australia will also be considered in the light of Australia's international obligations under a range of international instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and various International Labour Organisation (ILO) Conventions. Finally, the article considers the prospect of achieving more widespread paid employment-based maternity rights through the use of anti-discrimination measures. Before turning to these issues, it is useful to examine the economic and social rationales for paid maternity leave.

### The rationale for paid maternity leave

It is not difficult to advance a rationale for paid maternity leave based on its numerous economic and social benefits.[2] Reduction in turnover costs and the preservation of the investment made by employers in training and expertise form part of the justification for paid maternity leave on economic grounds. A worker who has satisfied the 12-month qualifying period that currently applies to most forms of parental leave will have gained considerable experience and training in the course of her employment. Evidence from the maternity leave survey conducted by the Australian Institute of Family Studies in 1988 shows that women who were eligible for maternity leave had been employed with their

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employer for a considerable length of time prior to the birth of their child, with the median number of years for public sector and private sector employment being 7 and 5 respectively.[3] Paid maternity leave can also be a means of overcoming the perception that women workers have a high labour turnover because of the impact of child rearing. The absence of paid maternity leave, in combination with other factors affecting women's participation in the labour market, only serves to fulfil this expectation.

In terms of social benefits, a lack of paid maternity leave overlooks the important social function of childbearing and parenting.[4] Instead, this function is treated as an entirely private activity for which women primarily must bear the economic cost. A period of paid maternity leave would decrease the immediate financial penalty in terms of loss of income from paid employment imposed on women by childbirth. In the absence of some form of income replacement the act of giving birth necessitates a period of economic dependence of a woman either on her partner or on social security.[5]

Access to leave currently is expressed in terms of a gender-neutral entitlement to parental leave, to encourage 'at least the idea, if not the actuality, of shared parenting'.[6] But like part-time and casual work, parental leave is the domain of women.[7] The norm is that women are the intended beneficiaries of 'family friendly' policies and it is in fact women who avail themselves of these policies. However, a scheme for paid maternity leave, as distinct from paid parental leave, could operate as a disincentive to employing women, or contribute to a further casualisation of women's work if current eligibility criteria are retained. A gender-specific entitlement may also serve to reinforce gender-based roles in child rearing and identify difficulties associated with combining employment and child rearing as a women's issue rather than a parental issue. As the Preamble of CEDAW states '... the role of women in procreation should not be a basis for discrimination but ... the upbringing of children requires a sharing of responsibilities between men and women in society as a whole ... [and] ... a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women'.

It should be acknowledged, however, that the notion of a gender-neutral leave entitlement that enables a 'choice' of which parent takes leave to care for young children is premised on an idea of abstract, ungendered individuals making rational and autonomous choices. It takes no account of the fact that a woman's choice is limited by the job opportunities available in a labour market affected by occupational and industrial segregation. As Marcia Neave argues, the breadwinner/dependent spouse relationship can be seen as a natural consequence of lower wages paid to women, occupational and industrial segregation, and limited support for family responsibilities.[8] Added to this are the social and cultural expectations regarding the 'social role' of women as primary care givers, supplementing the 'biological role' of childbearing.[9] Moreover, equal access for men to work in the home is a prerequisite to achieving equal access for women to paid employment. [10] Recent studies indicate that changes that have occurred in the gender make-up of domestic responsibilities has come about by a reduction in the number of hours spent by women on work in the home, rather than any specific increase in the time spent by men on such tasks.[11]

## Employment-based maternity rights

The various test cases by which the Australian Industrial Relations Commission (AIRC) has set the standard for maternity-related leave have made no provision for access to paid leave. The *Maternity Leave* case (1979) 218 CAR 120 made provision for women to take unpaid leave up to 52 weeks. The *Adoption Leave* case (1985) 298 CAR 321 provided for 12 months unpaid leave for adoptive mothers. The *Parental Leave* test case (1990) 36 IR 1 granted for the first time paternity leave and made changes to the existing standards of maternity leave and adoption leave. The standard set by *the Parental Leave* test case enables either parent[12] of a dependent child to obtain leave to act as the primary care giver of a child, up to a combined total of 52 weeks leave, with a right to return to work after the period of leave. A qualifying period of 12 months continuous service applies.

While the *Parental Leave* test case standard of unpaid leave has on the whole been the norm for private sector employment, a significant differential exists in the standard of parental leave between public and private sector employment in Australia, most notably in terms of the entitlement to a period of paid maternity leave. A statutory entitlement for women employed in the Australian Public Service to paid maternity leave was first introduced by the Whitlam government in 1973.[13] However an entitlement to paid maternity leave in public sector employment is by no means universal, particularly with current trends towards the privatisation of public instrumentalities.

The system of parental leave established as part of the minimum entitlements of employees under the *Industrial Relations Act 1988* (Cth) by the *Industrial Relations Reform Act 1993*,[14] adopts generally the standards set by the AIRC in the *Parental Leave* test case, although the legislative standard does not include the system of part-time work available under the test case standard. The legislative provisions operate as a minimum entitlement available to all employees, supplementing entitlements under other federal, State and Territory legislation and awards. As the legislation generally adopts the standard set by the AIRC in the *Parental Leave* test case, which is a standard that has been adopted in many State and federal awards, and which forms the basis of the statutory entitlement in some States, it is unlikely to be of any significant benefit to those subject to such awards or statutory provisions. It may benefit those who work in circumstances where this standard does not apply, for example, those in award-free employment, provided that person is not a casual or seasonal worker, whose employment is specifically excluded from the standard.[15]

## 'Atypical' work arrangement

The coverage of the minimum standards dealing with parental leave is indicative of the traditional preoccupation of labour law with the paradigmatic employee; that is, the male breadwinner.[16] This is evident in the exclusion of casual and seasonal workers, and the imposition of a qualifying period of 12 months continuous service. These replicate the parameters set by the AIRC in the various test cases. The restrictiveness of the provisions seriously undermines the ability of the legislation to provide anything approaching a comprehensive standard, given the large percentage of women whose employment is casual. Ironically, it is far easier for men than women to qualify for entitlements such as parental leave that are based on employment status.[17]

## Enterprise bargaining and paid maternity leave

Some proponents of enterprise bargaining have argued that more decentralised bargaining may in fact be beneficial to women as it provides the opportunity for greater flexibility in negotiations about work arrangements. The validity of this argument depends largely on the perspective of 'flexibility' adopted. From an employer perspective, flexibility is likely to include a greater spread of working hours and extended availability of employees, whereas from an employee's perspective, it may mean, for example, greater flexibility in accommodating family responsibilities. Whatever flexibility has been attained through enterprise bargaining, it has not extended to greater access to paid maternity leave, despite the considerable publicity for those institutions where paid maternity leave has been introduced.[18] Details from the Department of Industrial Relations Workplace Agreements Database indicate that of 7255 registered federal agreements only 67 agreements make provision for paid maternity leave. Paid maternity leave could of course be implemented in a workplace in the absence of an agreement through a change in employment policy, as occurred with Westpac Bank, although this practice is unlikely to be common.

There are a number of prerequisites that must be satisfied in order for paid maternity leave to be part of the agenda of enterprise bargaining. The most crucial is the valuing of the skills of women workers and a desire to retain those skills through policies that facilitate a return to the paid workforce. This is less of a problem for those women whose skills are highly valued and sought-after in the marketplace. But for the majority of women this will not be the case. Another important factor is whether there is a strong trade union presence in the workplace, and whether that trade union's industrial agenda gives some priority to issues affecting women. Overall, the advent of more decentralised bargaining is unlikely to open the floodgates to paid maternity leave. Further, the introduction of the Maternity Allowance may have a detrimental effect on bargaining over paid maternity leave, although it is intended to supplement rather than compete with other entitlements. The existence of a maternity benefit outside the employment framework may be used in negotiations as a way of deflecting attention from paid leave as a workplace issue and an employer responsibility.

## Workplace Relations Bill 1996

The minimum conditions of employment for employees provided under the proposed Australian Workplace Agreements essentially replicates the current standard in the *Industrial Relations Act*. The legislation clearly indicates that the entitlement will be to leave *without pay*.

## The Maternity Allowance

The new Maternity Allowance, effective from 1 February 1996, is a means-tested lump sum social security payment that is not tied to workplace participation. Interestingly, it began as an in-principle commitment by the federal government under the Accord Mark VII to providing 12 weeks paid maternity leave to all employees in line with ILO Convention 103. In March 1994, the National Council of the International Year of the Family raised in its Discussion Paper the idea of a young child/infant parenting allowance for all parents taking care of a new born or adopted child in the first 12 weeks, payable through the social security system.[19] In June 1994 the then Prime Minister Mr Keating indicated that:

> For next year's budget, the government will have further negotiations with the ACTU about ways to assist families, and in that context give consideration to introducing a maternity allowance paid through the social security system, in the spirit of ILO Convention 103 (maternity protection).[20]

This notion of a maternity payment formed part of the renegotiated Accord agreement between the Federal Government and the Australian Council of Trade Unions (ACTU) as part of a wage trade-off in 1994. The ACTU advocated a universal 12 weeks payment available to all women who did not have access to paid leave. In its Final Report in November 1994 the National Council of the International Year of the Family maintained a commitment to a universal social-security-based maternity payment.[21]

It was not until the May 1995 Federal Budget that the Maternity Allowance came to fruition. By then the Government had abandoned its commitment to a payment of 12 weeks duration. The notion of universal paid maternity leave had also by then somehow transformed into a lump sum 'baby bonus' subject to a means test on family income. The ultimate form of the Maternity Allowance is a lump sum payment equivalent to six weeks of the Parenting Allowance. The Family Payment income and assets means test applies to the Maternity Allowance. The means test currently provides for a maximum gross family income of $63,766 a year in the case of one child, with an incremental scale for each additional child. It has been claimed that 85% of women who give birth will be eligible for the payment.[22] The current lump sum payment is fixed at $857.40. It is payable in respect of any child born on or after 1 February 1996. Payment for maternity leave from other sources does not preclude a person from claiming the Maternity Allowance, but the amount received must be included as income for the purpose of the means test.

The nature of the Maternity Allowance needs to be carefully examined. Paid maternity leave is generally viewed as an income replacement mechanism, compensating for the loss of income from the paid workforce. A lump sum payment of $857.40 is equivalent to a payment of $142.90 for a period of six weeks. In this form the payment is clearly not income replacement, unless one is in receipt of income well below the poverty line. The average weekly wage of women in full-time paid work is $575.50.[23] A weekly payment of $142.90 represents only 25% of that income. Looking at it from the perspective of combined family income, the maximum family income for payment of the Allowance is $63,766 a year in the case of one child. As a maximum family *weekly* income this translates as $1226.27. A payment of $142.90 a week amounts to only 11% of this income.

At best it could be described as income support given the manner in which the amount of the payment is linked to Family Payment. However, unlike other income support payments which are payable on an on-going basis for as long as the criteria of eligibility continue, the Maternity Allowance is a lump sum payment payable once (in respect of each child) on the occurrence of a particular event. The Department of Social Security Guidelines specifically state that the Allowance is to be paid as a lump sum and not in instalments. In that sense it does not fit the typical model of social security entitlements. A better indication of the nature of the payment is the fact that it has been popularly referred to as a 'baby bonus'. Whatever may have been originally intended with the Maternity Allowance, its true character appears to be a one-off payment designed to offset some of the costs associated with the birth of a child. This conclusion is supported by the position adopted by the ACTU when the Allowance

came into effect. In its Press Release of 1 February 1996 the ACTU distributed an outline of what the Maternity Allowance would buy and indicated that:

> The $840 Maternity Allowance gives people extra money when they need it, at the birth of a child. We have costed a package of essential items for the new baby and the Allowance goes a long way to paying for what is required.

Included amongst other things on this itemised list is a pram, a highchair, four pilchers, two dozen cloth nappies, baby powder, baby shampoo, three jump suits, four singlets, a teddy bear and a bottle of champagne.

The Maternity Allowance is not employment related. It does not depend on employment status, nor does the rate correlate to income forgone by a period of leave. An entitlement in this form is not a measure that promotes equal employment opportunities for women workers. It does not facilitate continuous employment, nor promote on-going attachment to the paid workforce. The fact that the Allowance ultimately took the form of a non-employmen-based entitlement could be interpreted optimistically as a first step in the recognition of the value of women's caring role in the domestic sphere. A more cynical explanation is that the Allowance formed part of a wider political strategy by the Federal Government in seeking to secure another term in office. The Government sought to present a more 'family friendly' front, specifically seeking to attract the votes of single-income families with male breadwinners and full-time female carers working in the home.

The Maternity Allowance is presented as part of the developing notion of a safety-net in Australian social policy. But it cannot be regarded as the equivalent of paid maternity leave for workers in the paid workforce as it does not satisfy the criteria of income replacement. At best it is a maternity bonus designed to offset expenditures in relation to the maintenance of a child. Such an allowance is often paid in European countries as distinct from, and in addition to, paid maternity leave. As there is now little likelihood of paid maternity leave eventuating from the industrial arena through enterprise bargaining, for the reasons outlined above, alternative avenues such as anti-discrimination remedies need to be considered. However, before turning to the anti-discrimination context some assessment should be made of the current state of maternity rights in the light of Australia's international obligations.

## The international context

Australia does not meet international norms in terms of parental leave, most particularly in respect of paid maternity leave. On average, 14 to 16 weeks paid maternity leave is provided by the majority of OECD countries. The adoption of the European Community Directive on Pregnant Workers[24] in October 1992 requires the provision of a minimum of 14 weeks paid maternity leave, at least at the statutory level of sick pay. In addition to paid maternity leave entitlements, some European Union countries have also made provision for parental leave, in certain cases as a paid leave entitlement.

Australia has not ratified the most relevant international instrument dealing with maternity leave, ILO Convention 103 Maternity Protection (Revised) 1952, although it now maintains to have made a commitment to the 'spirit' of the Convention through the introduction of the Maternity Allowance. The Ratification of ILO Convention 103 was considered in 1992, but was rejected on the basis of widespread non-compliance at State and federal levels, the cost of such a measure, and the lack of a European style social insurance scheme by which to implement it.[25]

Article 4 of ILO Convention 103 states that a woman shall be entitled to receive a cash benefit while absent from work on maternity leave. The rate of the cash benefit is unspecified, but is to be fixed 'by national laws or regulations so as to ensure *benefits sufficient for the full and healthy maintenance of [a woman] and her child in accordance with a suitable standard of living*'. Article 4 states that the benefit is to be provided either by means of compulsory social insurance or by means of public funds. It specifically provides that 'in no case shall the employer be individually liable for the cost of such benefits due to women employed by him [sic]'. Hence reliance on ILO Convention 103 may not ground an employer-funded scheme of paid maternity leave. One advantage of this Convention is that is does not preclude access to maternity benefits for women who work casually or with service of less than 12 months. Further, access to maternity benefits is largely a matter of right, there being only limited circumstances in which a means test can be applied.

ILO Convention 103 deals with other maternity-related issues that have not yet been tackled in Australia. For example Article 5 entitles a woman to interrupt her work without penalty for the purpose of nursing a child. However, not all aspects of the Convention are positive. For example Article 3 mandates a period of compulsory leave after confinement. It has not been uncommon for international instruments to be used to justify forms of 'protective' legislation which serve to deny women access to employment opportunities. A compulsory period of six weeks leave following the birth of a child is dictated by the *Parental Leave* test case and by some State statutory schemes, although the minimum entitlements of the *Industrial Relations Act* are silent on this point. A 'protective' compulsory leave requirement in this form, in the absence of paid leave, has been identified by the Human Rights and Equal Opportunity Commission as directly discriminatory in a recent review of award provisions. If a compulsory period of leave can be forced on a woman, then clearly the norm should be paid leave.

Australia has also sought to avoid the full rigours of its international obligations by maintaining a reservation to CEDAW as regards paid maternity leave. Article 11.2(b) of CEDAW requires all appropriate means to be taken to introduce maternity leave with pay or with comparable social benefits without loss of employment, seniority or social allowances. Similarly, Article 10(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that 'Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits'.

Current Australian practice regarding employment-based maternity rights uses as its reference point the Workers with Family Responsibilities Convention and Recommendation, rather than the instruments referred to above. The current minimum entitlements dealing with parental leave in the *Industrial Relations Act* apparently comply with the Workers with Family Responsibilities Convention. The obligations under this Convention are very general in their 'family friendly' focus and make no specific reference to paid maternity leave. The most relevant obligation is expressed in Article 7:

> All measures compatible with national conditions and possibilities ... shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

It appears to have been a deliberate policy on the part of the government to avoid implementing those international instruments that mandate some form of paid leave.

However, even when one turns to those international instruments which deal specifically with paid maternity leave it is apparent that the obligations regarding payment are not necessarily onerous. Wide scope is allowed for national practice in terms of the implementation of various obligations. In most international instruments the option of making payment for maternity leave available in the form of a social security benefit is available. Although the Maternity Allowance may not be a genuine form of income replacement or income support, it is unlikely that it would fail to satisfy the very general classification of a social security benefit. Australia could argue it has now meet its obligations under various international instruments, including CEDAW, through the Maternity Allowance. However for this to be the case, provision must be made for maternity leave 'with pay or with *comparable* social benefits' for the purposes of CEDAW, 'with *adequate* social security benefits' for the purposes of ICESCR, and a benefit '*sufficient for the full and healthy maintenance of [a woman] and her child in accordance with a suitable standard of living*' for the purposes of ILO Convention 103. Whether the Maternity Allowance satisfies these stipulations is debatable.

A fundamental problem with using the implementation of international instruments as a means of according equality of employment opportunities for women is the generality of the obligations. International instruments that express obligations in the form of 'promotional standards' allow scope for the subordination of issues relevant to women.[26] In the case of maternity rights, Australia has clearly selected international instruments with the most general obligations to avoid paid maternity leave obligations. Similarly, in introducing the Maternity Allowance the Government has only paid lip-service to the obligations under other international instruments, which it has not ratified or to which it currently maintains a reservation, by giving minimal effect to these obligations. Ironically, the introduction of the Maternity Allowance could possibly enable Australia to withdraw its reservation to CEDAW in respect of maternity leave. It is unlikely that Australia would also take this opportunity to ratify ILO Convention 103 for a number of reasons. There are obligations in ILO Convention 103 that the present government may wish not to impose on employers, such as nursing breaks. But perhaps more importantly, the current Federal Government appears to have adopted an ideological stance opposed to the 'corruption' of Australian law by foreign standards, particularly those emanating from the ILO.

## The anti-discrimination context

The inherent problem in dealing with maternity rights within the anti-discrimination context has been the issue of comparability. In order to substantiate a claim of direct discrimination on the ground of pregnancy, or more generally on the ground of sex, the test is usually framed as whether a woman is treated less favourably than a man in comparable circumstances. Hence where the issue of maternity leave arises, a comparison might be made to a man seeking leave for health reasons. In this analysis pregnancy is treated as a form of disability, rather than a biological process unique to women. Alternatively, pregnancy is often identified as a 'lifestyle choice', comparable to leave sought for the purpose of fulfilling voluntarily assumed study or sporting commitments. Neither of these approaches gives sufficient credence to the social function of childbearing.

One way around the comparability problem is to follow the European Court of Justice approach which identifies unfavourable treatment on the grounds of pregnancy as direct discrimination on the grounds of sex, irrespective of the treatment of any male comparator.[27] In the words of the Court:

> ... there can be no question of comparing the situation of a woman who finds herself incapable, by reason of pregnancy ... of performing the task for which she was recruited with that of a man similarly incapable for medical or other reasons ... pregnancy is not in any way comparable with a pathological condition, and even less so with unavailability for work on non-medical grounds, both of which are situations that may justify the dismissal of a woman without discriminating on grounds of sex.[28]

The difficulty with following the approach of the European Court of Justice in Australia is that most legislatures have enshrined comparability into the definition of direct discrimination, thereby limiting the scope for an expansive interpretation of direct discrimination, although the ACT *Discrimination Act 1991* is evidence of a contrary trend.

Indirect discrimination is also steeped in the tradition of comparability, generally involving a consideration of whether members of a particular group, identified for the purposes of anti-discrimination protection, are comparatively less able to comply with a requirement or condition that is unreasonable in the circumstances. However, recent changes to the federal *Sex Discrimination Act 1984* (Cth) move indirect discrimination away from the issue of comparability. The emphasis is now on the imposition of a condition, requirement or practice that has the effect of disadvantaging persons of the same sex as the aggrieved person, or women who are pregnant or potentially pregnant. In the case of indirect discrimination the essence of the inquiry is to identify an apparently neutral requirement that has a disparate impact on the group in question and evaluate it in terms of reasonableness. In the case of maternity rights the requirement could be identified as one that requires parental leave to be taken as unpaid leave. It is clearly arguable that such a requirement has the effect of disadvantaging women, because of their biological role in childbearing and because of the fact that it is predominantly women who take parental leave and suffer a consequential loss of income. The sticking point with indirect discrimination is generally the issue of reasonableness. The question boils down to whether it is reasonable to require women to take leave associated with childbirth as unpaid leave. The *Sex Discrimination Act* sets out the factors to be taken into account in determining reasonableness, including the nature and extent of the resultant disadvantage, the feasibility of overcoming the disadvantage, and whether the disadvantage is proportional to the result sought to be achieved by the imposition of the requirement. Ultimately it is a question of how we as a community value the social function performed by women in childbearing and whether we see the costs associated with that, including loss of income, as a private or public responsibility.

Another perspective on maternity rights in the anti-discrimination context is to view the issue of unpaid leave as potentially a form of discrimination on the basis of family responsibilities. The *Sex Discrimination Act* was amended in 1993 to include family responsibilities as a proscribed ground of discrimination. Unfortunately the proscription has only a limited application to direct discrimination in the form of dismissal from employment. Consequently there is no prohibition on indirect discrimination on the basis of family responsibilities in the *Sex Discrimination Act*, although an expansion of the coverage of family responsibilities has been mooted for some time. A number of State anti-discrimination systems cover the equivalent ground of status as a parent or carer, and apply this ground to both direct and indirect discrimination. For unpaid parental leave to constitute direct discrimination on the basis of family responsibilities one needs to be able to point to less favourable treatment on this basis, again raising the comparability issue. What is probably more effective is to point to the disparate impact of an unpaid leave requirement on those who have the status of a parent or carer, leaving the reasonableness question open to the same considerations as outlined above.

## Conclusion

Ideally the fact of childbirth and the responsibilities of parenting should not impinge on the paid working life of women to any greater extent than men. But the current reality is somewhat different. The accommodation of pregnancy and maternity rights in the workplace is an essential part of facilitating women's participation in paid employment. Successive governments have shown a reluctance to impose the cost of social measures such as paid maternity leave on 'innocent' employers, in contrast to its attitude to such issues as superannuation or training levies. It is clearly within the legislative power of the Federal Government to confer a specific right to paid leave. Instead there has been a general acceptance of the status quo of unpaid leave, with a new supplementary entitlement to a Maternity Allowance. Although this payment does provide some benefit to those who are not in paid employment, and who would, therefore, never have access to employment-based maternity rights, it does little for women in the paid workforce. The Maternity Allowance leaves a large part of the income lost by women in taking maternity leave as a private cost for women. Women suffer sufficient labour market disadvantage simply from breaking their employment as a consequence of fulfilling the social function of childbearing. It is unfair to also require them to bear the cost of this community responsibility.

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